


This Notice is Current Until Rescinded

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PERSONNEL


1 May 1974

FAIR LABOR STANDARDS AMENDMENTS OF 1974

1. On 8 April 1974 the President signed Public Law 93-259, the Fair Labor Standards Amendments of 1974. These amendments bring all Federal agencies including the CIA under the Fair Labor Standards Act of 1938, as amended. The Civil Service Commission has been given the statutory responsibility for administering the Act within most Government agencies including the CIA. This notice discusses only the overtime pay provisions of the Act.

2. The overtime pay provisions of the Fair Labor Standards Act (FLSA) apply to all employees who are not specifically designated as exempt. Types of employees to whom the Act applies include General Schedule, all Wage Board, Contract, and Nonappropriated Fund. The status of all Agency employees will be examined, and they will be formally designated as "Exempt" or "Nonexempt" and notified accordingly. Exempt employees under the Act include certain employees in executive, administrative, and professional positions and all employees serving in foreign areas. The Civil Service Commission under its administrative authority has provided guidance for determining the exempt or nonexempt status of employees. The exemption categories are as follows:

a. Executive Exemption

Within the executive category, employees are exempt as managers or supervisors. To be exempt requires a degree of responsibility which usually includes planning work, assigning work, reviewing results, and rating employees. Within the Wage Board category, wage supervisors are exempt but Leaders are not. Nonappropriated fund employees except for supervisors are nonexempt.

b. Administrative Exemption

The administrative exemption category includes many employees in the Agency who are currently designated as professional. The work of such employees is concerned with management policies and general operational activities. Thus most intelligence and administrative employees are included within this group. Within this category the full performance level, which is below the supervisory level, is considered exempt. Employees who perform work which is trainee or developmental in nature and below the full performance level are nonexempt.

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c. Professional Exemption

The professional exemption applies to employees whose work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education. Included are economists, psychologists, engineers, architects, attorneys, and other categories traditionally known as professional. At the full performance level in this category employees are exempt.

3. Under the FLSA, overtime for nonexempt employees must be paid for all hours actually worked over 40 in a week which the employer "suffers or permits" to be performed. Thus, for non-exempt employees, overtime need not be "officially ordered or approved" as is presently required. The supervisor must not permit nonexempt employees to report early and perform work or voluntarily stay after hours to work without compensation. Further, compensatory time cannot be substituted for overtime payment. Nonexempt employees must be paid for overtime work.

4. The overtime rate for a nonexempt employee is not less than one and one-half times the employee's regular rate of pay which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign).

5. A nonexempt employee, for overtime purposes, is entitled to the highest rate he will receive under applicable pay laws. This means that his rate must be computed both under present rules and under the FLSA with the higher amount being paid.

6. Responsibility for compliance with overtime provisions has been given to the Civil Service Commission. In conducting review for compliance, the Civil Service Commission will be responsible for post audit of overtime pay administration to determine violations and order corrective actions. The Law provides that employees may bring civil actions in Federal District Courts at any time they believe they have not been dealt with in accordance with the Act. However, the employee must first exhaust the administrative remedies available to him within the Agency.

7. The Law applies in all states and territories including Hawaii, Alaska, Puerto Rico, Guam, and the Canal Zone but it does not apply in foreign areas.

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8. The effective date of the FLSA provisions is 1 May 1974. Nonexempt employees will continue to be paid at the present rate until appropriate revisions to the payroll system have been completed. At that time, employees entitled to a larger payment under the FLSA will receive retroactive adjustments. Time and attendance reporting procedures are being revised and will be issued in the near future.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

HAROLD L. BROWNMAN
Deputy Director
for
Management and Services

DISTRIBUTION: ALL EMPLOYEES

OVERTIME WORK

1. PURPOSE. This Instruction supplements [REDACTED] which gives general Agency policy on overtime and related authorities and responsibilities.

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2. AUTHORIZATION OF IRREGULAR OR OCCASIONAL OVERTIME. Irregular or occasional overtime may be authorized by Office Heads and their general Deputies, the Executive Officer to the DD/S, the Special Support Assistant to the DD/S, and the Chief of the Support Services Staff. This authority may be further delegated only by the Deputy Director for Support. Should there be a need for further delegation, a request including reasons should be sent to the DD/S. Authorizing officials are responsible for ensuring that certifications on time and attendance reports authorizing compensation for overtime are made only by themselves.

3. APPROVAL OF REGULARLY SCHEDULED OVERTIME. A request for the approval of regularly scheduled overtime will be signed by the Office Head and sent to the Deputy Director for Support for approval. It should specify the schedule on which the overtime would be worked, the beginning and ending dates of the period for which approval is requested, and a justification. After DD/S approval has been given, the certification on the time and attendance reports of the individual(s) concerned that the overtime has been authorized for compensation (actual payment or credit of compensatory time) will be by the appropriate authorizing official designated by or in accordance with paragraph 2 above.

4. ANNUAL PREMIUM PAY. A request for the payment of annual premium pay for individual cases will be forwarded through the Deputy Director for Support, who must concur, to the Director of Personnel, who must approve. It should name the employee(s) concerned, state the proposed rate and effective date, and explain why annual premium pay is justified and the basis for the rate proposed. After annual premium pay has been approved, it is payrolled automatically. There is no need for time and attendance reports to show the overtime hours worked but they must carry a certification by an authorizing official designated by or under the provisions of paragraph 2 above that payment of the premium pay continues to be justified. The Office Head or Staff Chief is responsible for promptly notifying the Director of Personnel, with a copy to the Deputy Director for Support, when annual premium pay should be stopped or the rate reduced.

[REDACTED]
JOHN W. COPPEY

ACTING DEPUTY DIRECTOR FOR SUPPORT

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